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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues prior to submission of the initial report of Nicaragua*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, at its fourteenth session (A/66/48, para. 26), established a procedure which consists of the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its report. The replies of the State party to this list of issues will constitute its report under article 73, paragraph 1, of the Convention. In accordance with General Assembly resolution 68/268, paragraph 16, the initial report should not exceed 31,800 words.

A list of issues may also be transmitted to a State party in cases where the Committee decides to examine the implementation of the Convention in the absence of a report, in accordance with rule 31 bis of the provisional rules of procedure (A/67/48, para. 26).

Part I

In this section, the State party is requested to submit its responses to the following questions:

A. General information

1. Please provide information on the national legal framework as it relates to the Convention, including:

(a) The ranking of the Convention in national law and whether the Convention has direct effect or becomes part of national law through implementing legislation;

(b) Relevant national legislation regarding the protection of migrant workers and members of their families, and migration policies under the Convention;

* Adopted by the Committee at its twenty-second session (13 to 24 April 2015).

(c) Measures taken to harmonize legislation with the provisions of the Convention, in particular General Act No. 761 of 2011 on Migration and the Status of Aliens, and its regulations, adopted by Decree 31-2012;

(d) The existence and scope of bilateral and multilateral agreements with other countries, in particular Costa Rica, Panama, Mexico and the United States of America, specifying how those agreements protect rights and provide safeguards for migrant workers in countries of transit and destination, particularly with regard to labour rights, social security and procedures relating to detention, repatriation/expulsion and family reunification. Please also provide information on measures in place to improve protection for the rights of Nicaraguan migrant workers and members of their families abroad, including through the revision and modification of those agreements.

2. Please provide information on the policies and strategies adopted by Nicaragua in relation to the rights of migrant workers and members of their families, including information on objectives and tangible and measurable goals for monitoring progress in the implementation of the rights of migrant workers and members of their families. Please also provide information on the resources allocated for the implementation of those policies and strategies and on the results obtained.

3. Please provide information on the government ministry or institution responsible for intergovernmental coordination in the implementation of the Convention and the mechanisms for inter-institutional cooperation, together with information on the allocation of staff and resources and on monitoring activities and follow-up procedures. Please also provide information on the mandate of the ministry or institution and the resources allocated to promoting, protecting and guaranteeing the rights of migrant workers and members of their families within the framework of the Convention.

4. Please provide information, including qualitative information and statistical data disaggregated by sex, age, nationality and migration status, on labour migration flows into and out of Nicaragua, including returns, on other issues relating to labour migration and on children whose parents have migrated. Please also provide data — or studies or estimates if precise data are not available — on migrant workers in an irregular situation in Nicaragua and abroad, in particular those working in less regulated sectors such as agriculture and domestic work. Please provide as well information on the measures taken to establish a coherent and cross-comparable system of data collection on these issues and on the measures taken to make those data available to the public, including qualitative and quantitative data on the rights safeguarded under the Convention.

5. Please provide information on the mandate of the Office of the Human Rights Advocate (the national human rights institution) as regards human rights in Nicaragua, including the rights of all migrant workers and members of their families, under the Convention. Please also provide information on complaint mechanisms and other services offered by the Office, such as helplines, and please state whether the Office conducts visits to migrant detention centres and alien and immigrant custodial centres located at facilities under the purview of the Directorate General for Migration and Alien Affairs. Please indicate action taken and programmes operated by the Office with regard to the rights of Nicaraguan migrant workers in transit and destination countries. In addition, please provide information on the human, technical and financial resources made available to the Office and on steps taken to raise awareness among the general public, and particularly among migrant workers in urban and rural areas, of the services offered by the Office, including the right to file a complaint directly with the institution.

6. Please provide information on measures taken to promote and publicize the Convention and to increase awareness and understanding of its provisions among the general public, in particular among migrant workers and members of their families,

employers, teachers, health workers and government employees, including law enforcement officials and the judiciary. Please describe the steps taken to promote training programmes on the human rights of migrant workers and members of their families, including gender issues and children's rights, for government staff who provide legal and consular assistance to Nicaraguans abroad and who deal with migration and related matters, including: labour exploitation and abuse; migrant workers or members of their families who have been arrested or imprisoned at detention centres or placed in custody pending trial or detained in any other manner; victims of human trafficking and other crimes; and those subject to expulsion or repatriation.

7. Please provide information on cooperation and interaction between the State party and civil society organizations working to uphold the rights of migrant workers and members of their families under the Convention, including organizations of State party nationals in destination countries. Please indicate whether and how representatives of civil society organizations and other stakeholders are involved in the design, implementation and/or evaluation of migration policy and in the preparation of the responses to the present list of issues.

8. Please provide information on the existence of private employment agencies that recruit workers for employment abroad and on the laws and regulations governing private recruitment, in particular:

(a) Steps taken to provide information and training to migrant workers on their rights and obligations and to protect them against abusive employment situations;

(b) Whether recruiters assume joint liability with the employer in case of claims and liability that may arise in connection with the implementation of the employment contract, including wages, compensation for disability, repatriation and death;

(c) Information on, and requirements for, the issue and renewal of licences of such employment agencies;

(d) Information on complaints filed against the agencies and inspections, as well as the penalties or sanctions imposed in cases of non-compliance;

(e) Steps taken to strengthen migration regulation and monitoring mechanisms to ensure that private employment agencies do not charge excessive fees for their services or act as intermediaries for abusive foreign recruiters.

B. Information relating to the articles of the Convention

1. General principles

9. Please indicate whether the Convention has been directly applied by government officials and/or invoked directly before the courts, and whether the courts have applied it. If so, please include examples. Please also provide information on:

(a) Judicial and/or administrative entities competent to examine and decide on complaints by migrant workers and members of their families, including workers in an irregular situation in the State party as well as Nicaraguan migrant workers living abroad;

(b) Number and type of complaints examined by such entities in the past five years and the outcomes, disaggregated by sex and age;

(c) Whether legal assistance was provided;

(d) Any redress, including compensation, provided to victims of such violations;

(e) Any measures taken to inform migrant workers and members of their families about the remedies available to them when their rights have been violated.

2. Part II of the Convention

Article 7

10. Please indicate how national legislation, in particular the Constitution, the Labour Code and the Migration and Aliens Act, ensures that all migrant workers and members of their families enjoy the rights provided for in the Convention, without distinction of any kind, and whether that legislation covers all the prohibited grounds for discrimination enumerated in the Convention (art. 1, para. 1; and art. 7), including sex, language, national, ethnic or social origin, nationality, age, economic position, property, marital status and birth or other status. Please provide information on any restrictions on entry into the country or residence based on the individual's health status, pursuant to article 63 of Decree 31-2012. Please also provide information on all steps taken by the State party to ensure non-discrimination, by law and in practice. As well, please provide information on access to health care and other social services for migrant workers and members of their families, whether in a regular or irregular situation, as well as education for the children of migrant workers in a regular or irregular situation.

3. Part III of the Convention

Articles 8 to 15

11. Please provide information on measures taken to combat exploitative employment of migrant workers in the State party — including those in an irregular situation and in particular those employed in farm or domestic work — and of its nationals in destination countries. Please also provide information on measures taken to prevent and provide protection to migrant workers, especially women and children, against domestic servitude, forced labour and commercial sexual exploitation, in particular sex tourism. Please provide as well information on measures taken to align national legislation with the International Labour Organization (ILO) Convention concerning Forced and Compulsory Labour, 1930 (No. 29) and the ILO Convention concerning the Abolition of Forced Labour, 1957 (No. 105).

12. Please provide detailed information on measures taken to investigate allegations of harassment, corruption and abuse of authority by law enforcement officials, including trafficking of persons and smuggling of migrants, as well as allegations of extortion and arbitrary detention, with regard to migrant workers and members of their families, including Nicaraguan migrants trying to leave the country. Please indicate the number of registered complaints and of law enforcement agents who have been investigated, prosecuted and convicted in this regard, and specify the nature of the charges and sentences imposed.

Articles 16 to 22

13. Please provide information on measures taken by the State party to ensure due process, including access to justice, legal assistance and interpretation services, where necessary, when a migrant worker or member of his or her family is under investigation, under arrest, being detained or subject to expulsion for a criminal offence or administrative infraction, including in immigration-related matters. Please also provide information on the applicable safeguards where entry into the country is denied on the basis of article 133 of Decree 31-2012, as well as the alternatives to detention in such circumstances.

14. Please provide information — disaggregated by nationality, sex and age — on migrant workers and members of their families who have been placed in detention. Please also provide information on detention centres and conditions of detention with regard to sanitary conditions, food and water, communication with and visitation by family members, medical care and information, and access to complaint procedures. Please specify whether detention takes place at a public-sector facility and whether the facility is separate from the prison system. Please provide information on whether the State party has alternatives to detention in place for immigration-related matters and, if so, how these alternatives are given priority over deprivation of liberty, including alternatives for unaccompanied children and families with children.

15. Please provide up-to-date information, including disaggregated statistical data, on migrant workers and members of their families who have been expelled or are in proceedings for the expulsion of migrants who are undocumented or in an irregular situation, the causes for expulsion and the applicable safeguards in such cases, including access to justice. Please indicate whether collective expulsion is prohibited by national legislation. Please indicate as well whether migrant workers may challenge an expulsion order and whether this remedy has suspensive effect.

Article 23

16. Please provide detailed information on the services provided by embassies and consulates, particularly labour attaché offices if they exist, to assist and protect Nicaraguan migrant workers and their families abroad, including those in an irregular situation, and in particular in cases of abuse, arrest, detention, return or expulsion. Please state whether legal assistance is provided, including in detention and/or expulsion cases and whenever the rights recognized in the Convention are involved. Please provide information on training programmes for consular staff on the rights recognized in the Convention and on the resources allocated to ensure consular protection to migrant workers and members of their families.

Articles 25 to 30

17. Please provide information on measures taken to ensure, in practice, the right of migrant workers, and in particular of women migrants, to equal treatment, especially those employed in domestic work, farm work and manufacturing, and on measures to effectively monitor their working conditions. Please indicate what forms of legal and labour protection are in place to ensure that migrant workers are not subjected to less favourable treatment than State party nationals with regard to remuneration and conditions of work. Please provide as well information on measures in the aforementioned regards for Nicaraguan migrant workers in their destination countries.

18. Please provide information on measures taken, through legislation and in practice, to ensure that all migrant workers and members of their families have access to health care.

19. Please provide information on measures taken, through legislation and in practice, to safeguard the right of children of Nicaraguan migrant workers to registration of their birth and to have their nationality of origin recognized. Please also provide information on any difficulties encountered in the registration of the children of migrant workers in an irregular situation and on measures taken to ensure the registration of children of foreign migrant workers in Nicaragua.

20. Please provide information on measures taken to ensure that the children of migrant workers, regardless of their migration status, have full access to education.

Article 33

21. Please describe the measures taken to ensure that migrant workers who enter or are preparing to go to Nicaragua have access to clear information on immigration procedures, including the conditions for their entry, stay and remunerated activity in which they may engage, as well as all applicable legislation. Please provide information on pre-departure programmes for Nicaraguan migrant workers, including about their rights and obligations in the State of employment. Please indicate which government institution is responsible for providing such information and whether any coordinated policies, programmes or legislation is in place to ensure transparency and accountability in this process.

4. Part IV of the Convention

Article 41

22. Please provide information on measures taken by the State party to review legislation and its effective implementation so as to ensure that Nicaraguan migrant workers and members of their families who reside abroad:

(a) Have the right to participate in the public affairs of the State party;

(b) Can exercise their right to vote in the State party;

(c) Have the right to be elected to public office in the State party.

Article 48

23. Please provide information on any bilateral or multilateral agreements concerning migration, in particular temporary work programmes, and other agreements relating to employment, protection, double taxation and social security.

5. Part V of the Convention

Article 58

24. Please provide information on measures taken to improve the situation of cross-border workers and to include in national legislation a definition of cross-border workers and specific provisions related to the protection of their rights, in accordance with article 58 of the Convention.

6. Part VI of the Convention

Article 64

25. Please provide information on measures taken, including consultations and cooperation with other States, to promote acceptable, fair and decent conditions for international migration of workers and their families. Please indicate any bilateral or multilateral agreements entered into for this purpose.

26. Please provide information on measures taken to prevent the irregular migration of State party nationals, in particular women and unaccompanied children, including through multilateral or bilateral agreements, policies or programmes aimed at enhancing legal migration channels and preventing — through a broad, human rights-based approach — the causes of irregular migration, such as violence, unemployment and poverty. Please include information on how those measures have been incorporated into public policies and programmes and indicate whether, as a result of those measures, the number of migrants in an irregular situation has decreased.

Articles 67 and 68

27. Please provide information on measures taken to intensify and to allocate financial and other resources to prevention campaigns aimed at combating the dissemination of misleading information about emigration and to raise public awareness about the dangers of irregular migration, including for unaccompanied children. Please also provide information on cooperation with transit and destination countries to ensure the safety and other rights of Nicaraguan migrant workers abroad, including migrant children, whether or not accompanied.

28. Please provide information on measures taken to promote conditions that facilitate resettlement and reintegration, in particular from a rights perspective, of Nicaraguan migrants, including the children of Nicaraguan migrants, who return — voluntarily or forcibly — from transit or destination countries.

29. Please provide information on measures taken, in particular through international, regional or bilateral cooperation with countries of origin, transit and destination, to prevent irregular flows of migrant workers and members of their families, including through human trafficking, especially of women and children. Please also provide information on measures taken to protect migrant workers who are victims of human trafficking. In addition, please provide information on measures taken by the State party to prevent, through a broad-ranging policy, the irregular migration of its nationals, including of unaccompanied children.

30. Please provide information on measures taken by the State party, including through international, regional or bilateral cooperation with countries of origin, transit and destination, to detect and eradicate human trafficking and the smuggling of migrants, in particular of women and children, including the systematic compilation of disaggregated data, and to bring the perpetrators to justice. Please also provide up-to-date information on the number of reported cases of human trafficking and smuggling of migrants, investigations, prosecutions and the sentences imposed on perpetrators.

31. Please indicate whether the State party intends to formulate and implement a national public policy to address the issue of human trafficking, and provide information about programmes to aid, support and repatriate victims of trafficking. Please indicate as well if the State party has established victim support centres and if those centres provide medical care and mental health counselling. Please provide as well information on other kinds of assistance provided to victims, such as financial support, housing, training opportunities and legal services. In addition, please provide information about the application of the provision on denial of entry under article 86.6 of Decree 31-2012 with regard to persons who engage in prostitution.

32. Please provide information on measures taken by the State party to prevent and eliminate human trafficking and smuggling of migrants, in particular training for the judiciary, law enforcement officials, border guards and social workers, especially in remote rural areas, on how to identify victims of trafficking and smuggling.

Article 69

33. Please describe the measures taken by the State party, including through bilateral or multilateral agreements, to improve the protection and assistance afforded to Nicaraguan nationals living abroad, including efforts to promote the regularization of their situation.

Part II

The Committee invites the State party to provide concise information (three pages maximum) provide information regarding the protection of all migrant workers and members of their families with respect to:

(a) Bills or laws, and their corresponding regulations;

(b) Institutions (and their mandates) or institutional reforms;

(c) Policies, programmes and action plans covering migration, and their scope and financing;

(d) Recent ratifications of human rights instruments, including International Labour Organization (ILO) Convention No. 97 (revised 1949) concerning Migration for Employment and ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers;

(e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Part III

Data, official estimates, statistics and other information, if available.

1. Please provide, if available, disaggregated statistical data for the past three years on:

(a) The volume and nature of migratory flows into and from the State party;

(b) Migrant workers in detention in the State party, migrant workers from the State party in detention abroad and whether that detention is related to migration;

(c) Migrant workers and members of their families that have been expelled or deported from or to the State party;

(d) The number of non-accompanied migrant children, or migrant children separated from their parents, in the State party and in countries of transit or destination;

(e) Remittances from migrant workers who are nationals of the State party working abroad and what proportion of GDP those remittances represent;

(f) Reported cases of trafficking and smuggling of migrants, investigations, prosecutions, and the sentences imposed on perpetrators (disaggregated by sex, age, nationality and purpose of trafficking);

(g) Legal assistance services provided to migrant workers and members of their families inside the State party and to nationals of the State party working abroad or transiting other States.

2. Please provide additional information on any important developments and measures being taken to implement the Convention that are considered a priority, including whether the State party intends to make the declaration under article 76 of the Convention, which recognizes the competence of the Committee to receive and consider inter-State party communications, and/or under article 77 of the Convention, which recognizes the competence of the Committee to receive and consider individual communications.

3. Please submit an updated core document in accordance with the requirements of the common core document set out in the "Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and

treaty-specific documents", approved at the Fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).[1]

The Committee may take up any and all aspects of the rights of migrant workers and members of their families under the Convention during the dialogue with the State party.

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[1] The State party submitted its core document in 2008 (HRI/CORE/NIC/2008).